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Petitioner and Appellant,

v.

[redacted]

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-877

JULIO ALONSO,

Petitioner and Appellant,

vs.

STATE OF CALIFORNIA, DEPARMENT OF HUMAN RESOURCES AND STATE OF CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondents California Department of Human Resources Development (now the Employment Development Department) and the California Unemployment Insurance Appeals Board file this brief in opposition to the Petition for Writ of Certiorari filed in this Court on December 22, 1975, and respectfully pray that the Court deny the petition.

Introduction

The opinion of the California Court of Appeal, attached to the Petition for Writ of Certiorari as Appendix B, adequately sets forth the factual and

procedural matters which have transpired. It should be observed, however, that petitioner is incorrect in stating that he was held to be unavailable for work "solely on the basis of his refusal to show his 'immigration card. . . .'" (Petn., p. 5.) The Court of Appeal correctly noted that petitioner admitted that he was an alien but refused to state that his entry was legal or present *any* documentary evidence regarding his status. (Appendix B, pp. 3, 12-13.) At the administrative hearing it was established that petitioner refused to present "any kind of proof" that the Immigration and Naturalization Service was aware that he was in the United States.

Issue

Does the Department of Employment Development violate any constitutional or statutory provisions by insisting that applicants for unemployment insurance benefits who are not United States citizens furnish evidence that the Immigration and Naturalization Service is aware of their presence in the United States in order to establish their availability for work under California law?

WHY THE COURT OF APPEAL WAS CORRECT

1. Petitioner Was Not Available for Work

All applicants for unemployment insurance benefits are asked by the Department of Employment Development (hereafter Department) if they are citizens of the United States. If an applicant responds that he is not, he is requested to present proof that the United States Immigration and Naturalization Service (hereafter INS) is aware of his presence in the country. The respondent Department's procedure in this regard is set forth in its Local Office Manual which governs local office policy and is designed to give effect to federal statutes and regulations.

Petitioner incorrectly asserts that California law denying unemployment insurance benefits to persons who admit to the Department that they are not citizens but refuse to present documentary evidence that the INS is aware of their presence in the United States intrudes into a federally preempted field.

There is no question but that immigration and the regulation of aliens, both legal and illegal, is predominantly a federal concern, and this was recognized in the opinion of the Court of Appeal. (Appendix B, p. 7.) The Department and the California Unemployment Insurance Appeals Board (hereafter Board) have no intention of interfering with federal action or policy in this area, and have not done so in the instant matter.

The case at bar simply involves an interpretation of California Unemployment Insurance Code section 1253, subdivision (c), which provides that:

> "An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:
>
> ". . .
>
> "(c) He was able to work and available for work for that week."

The Board and the California courts have interpreted "available for work" as more than a "mental and emotional willingness to accept suitable employment." (Petn. for Cert., p. 11.) Availability requires physical ability to report to work. For instance in Board Decision No. P-B 32 the Board held that a claimant who was required to be in court during his normal workweek was ineligible for unemployment benefits because he was not available for work on the days he was in court. The Board also has held that a claimant, attending school during one or more days of his workweek, visiting relatives, travelling, or attending a sporting event, was unavailable for work during that time and thus ineligible for benefits for the week.

Likewise, one who is not legally in this country cannot legally be qualified to work here. This conclusion is supported by reference to governing federal statutes.

The Board has observed that when considering the question of availability for work the public policy of the United States must also be considered. The Board has held:

> "It would be an absurd consequence for the Department of Human Resources Development of

> the State of California to assist a person, an illegal entrant, seeking advantages that, in our opinion, are available only to citizens and others who are lawfully admitted to our country. Denied unemployment benefits, he will not be as likely to succeed in maintaining himself and accomplishing his cheat upon the government." (Appendix B, p. 15.)

Obviously, if the claimant is not legally entitled to work in this country, he is not "available for work" within the meaning of the statute. Closely related to this requirement is the requirement set forth in Unemployment Insurance Code section 1253(b) that the claimant "has registered for work, and thereafter continued to report, at a public employment office. . . ." Once again, the illegal alien who is not legally qualified to work cannot register at a public employment office. Hence, the alien who is in the United States illegally is disqualified by sections 1253(b) and 1253(c).

California Unemployment Insurance Code section 100 provides that one of the purposes of providing unemployment insurance benefits is to reduce involuntary unemployment to a minimum. The payment of unemployment insurance benefits to illegal aliens would subvert this purpose by encouraging their presence in California and cause them to compete for jobs with citizens and lawful resident aliens.

California law is fully compatible with federal law regarding aliens and unemployment insurance benefits.

2. The Procedure Is Necessary to Establish Federal-State Conformity in Its Unemployment Insurance Laws and Federal Laws Regulating Aliens

One of the federal statutes which applies to the states in the area of unemployment insurance is the Wagner-Peyser Act (29 U.S.C. §§ 49-49(k)). That act states in section 3:

> "(a) It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are *legally qualified* to engage in gainful occupations, . . . to assist in establishing and maintaining systems of public employment offices. . . ." (Emphasis added.)

The regulations make clear that this statute is only meant to apply to those who are *legally qualified* to work. For example, at 20 C.F.R. § 604.1, it is stated that the policy of the United States Employment Service is:

> "(a) To accept an application from any applicant, *legally qualified to work,* without regard to his place of residence, current employment status, or occupational qualifications." (Emphasis added.)

Before federal funds under the act are made available to the states, it must be clear that the state is complying with the federal law. California has enacted the necessary statutes to indicate its acceptance of the Wagner-Peyser Act. This acceptance is explicitly set forth in Unemployment Insurance Code section 2051. Unemployment Insurance Code section 2052 provides that the director of the Department:

> ". . . may do and perform all things necessary to secure to this state the benefits of that Act in the promotion and maintenance of a system of public employment offices."

The procedures taken by the Department were eminently suited in making the determination necessary for the state to continue its eligibility for federal funds under the Wagner-Peyser Act. The statute and the federal regulations require that the individual must be legally qualified to work. It is therefore perfectly reasonable for a state to inquire of claimants for unemployment insurance compensation whether they are legally qualified to work. The corollary follows that if California wishes to qualify for funds under the federal act, it must take positive steps to assure that persons claiming benefits fulfill the requirements of the Wagner-Peyser Act. The least burdensome way to do this is simply to ask a claimant to show that he has informed the INS of his presence. This petitioner refused to do.

Additionally, California has an obligation not to subvert the federal statutory scheme which controls the presence of aliens and immigrants in this country. This scheme is codified in Title 8 of the United States Code. That title prescribes detailed procedures to which aliens and immigrants are subject. It imposes registration requirements on aliens, it subjects them to physical examination and fingerprinting, and it controls the circumstances under which they can work in this country. Among other things, Congress has shown concern that jobs which might otherwise be available to aliens lawfully residing here and to American citizens might be taken by persons coming into this country unlawfully.

For that reason, aliens are often required to obtain a certification from the United States Attorney General that they may lawfully engage in their particular work or occupation. *See* 8 U.S.C. § 1182(a)(14) (1964) Ed. Supp. V).

It is the duty of California to do everything it can to implement the purpose of the federal law. Were the state to pay unemployment insurance benefits to aliens who are illegally in this country and who have not been certified for work, either through work permits or otherwise, the state would be subverting the federal scheme and would be subsidizing persons who are performing illegal acts. Clearly California has a duty not to undermine the alien registration law or to compromise the intent of Congress that jobs be first available to American citizens and aliens lawfully residing here and entitled to work.

3. The Procedure by Which Petitioner Was Determined to Be Unavailable for Work Does Not Violate Due Process of Law

The requirement that an alien present proof that the INS is aware of his presence in this country does not violate due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. This Court has not expressly addressed itself to the question of whether an illegal alien can rightfully invoke the due process clause of the Constitution; however, at least as to admission/exclusion cases the state may not disregard the fundamental principles that inhere in due process of law. *Yamataya v. Fisher*, 189 U.S. 86, 100, 23 S.Ct. 611, 614 (1903). Even if an illegal alien could invoke the due process clause, petitioner's contention is without merit.

The very reason the alien is required to present proof that the INS is aware of his presence is to determine the alien's right to unemployment insurance benefits under both federal and state law and therefore bears a rational relationship to the program. Since an illegal alien has no right to unemployment insurance benefits, the denial of benefits to such persons who fail to present proof that the INS is aware of their presence in order to perpetrate their clandestine existence does not deprive them of any right protected by the due process clause of the Constitution.

It has never been held by the courts that it is a denial of due process to require a claimant to show his entitlement to benefits by, for example, making a statement of availability for work or a statement that he has not received wages on the basis that such a requirement bears no rational relationship to the program of unemployment insurance.

In *People v. Mendoza*, 251 Cal.App.2d 835, 840 (1967), the court stated:

> "It is not a violation of the privilege against self-incrimination that administrative officials and peace officers are authorized by certain statutes to require evidence of identity or a statement of identity.
>
> "The use of identification cards for aliens . . . is contemplated by the rules of the Immigration and Naturalization Service (Ex parte Kojiro Sugimori, 58 F. 2d 782). Such cards as evidence of identity and status may be compared to licenses issued to operators of motor vehicles."

In the present situation, petitioner could not claim he did not have to give his name to claim benefits

and this alone would enable the Department to determine if the INS was aware of his presence. The Department's requirement that aliens present proof that the INS is aware of their presence merely permits the Department to expedite determinations as to the aliens' right to claim unemployment insurance benefits and again bears a rational relationship to the purpose of the unemployment insurance program.

4. There Is No Problem of Preemption

In examining the merits of any preemption problem, the court must analyze what is being regulated, by whom, for what purpose, and the statutory language and statutory intent. *Baltimore Shippers v. P.U.C. of Cal.*, 368 F.Supp. 836 (N.D. Cal. 1967). Measured by these criteria, it becomes obvious no preemption problem exists here.

It seems clear that the federal government has established a comprehensive scheme of legislation dealing with aliens and respondents have no quarrel with the contention that the federal government has preempted the field. *See Hines v. Davidowitz*, 312 U.S. 52 (1941). But petitioner has simply missed the point in arguing that California has purported to act in conflict with the federal statutes. The fact is that California has made no attempt to enact legislation dealing with aliens and covering such matters as registration, conditions under which aliens may lawfully reside in this country and deportation. In this area, the State has deferred to the federal government in accordance with the Supremacy Clause of the U.S. Constitution.

It cannot seriously be argued that California's efforts to implement the federal law and its attempt to comply

with the Wagner-Peyser Act as well is in derogation of or frustrates the federal legislation. *See Fitzgerald v. Catherwood,* 388 F.2d 400 (2d Cir. 1968), *cert. denied,* 391 U.S. 934.

A problem of preemption would be presented if California, for example, had its own registration forms for aliens, *cf. Hines v. Davidowitz, supra,* or established its own quotas for admission of aliens. But the state does none of these things. It simply asks, for the reasons set forth earlier, that the alien produce evidence that the INS knows he is in the country. The purpose is not to regulate an area controlled by federal law but merely to establish eligibility for unemployment insurance benefits.

Petitioner's citations to *Dolores Canning Co. Inc. v. Milias,* 40 Cal.App.3d 673 (1974) and *De Canas v. Bica,* 40 Cal.App.3d 976, *cert. granted,* 421 U.S. 987 (1975), are not supportive of his contentions. In those cases the court held that the federal government has exclusive jurisdiction in respect to illegal alien workers, to the exclusion of the states, and that a state law which attempts to regulate in that area is invalid. For state law to make illegal aliens eligible for unemployment insurance benefits, therefore, would be an invalid attempt to invade an exclusively federal area. For an intermediate point of view, that the states retain jurisdiction to regulate employment of illegal aliens, see 13 San Diego Law Review, "The Doctrine of Preemption and the Illegal Alien: A Case for State Regulation and a Uniform Preemption Theory," 166, 173 (1975).

Conclusion

Respondents' interest in determining resident status is aimed only at ascertaining the eligibility of a claimant for unemployment insurance benefits. It does this by determining whether the claimant is available for work and whether he is legally qualified to work and therefore able to register for work with a public employment office. This does not deny equal protection, deny due process or interfere with any federal law.

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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